

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

MICHAEL D. ROSE,
and EDWARD L. HARMON,
*on their own behalf and on behalf
of all others similarly situated,*

Plaintiffs,

v.

CIVIL ACTION NO. 5:22-cv-00405

MICHAEL FRANCIS and
LARRY WARDEN, both
*individually and as employees of
the West Virginia Division of Corrections
and Rehabilitation,*
THE RALEIGH COUNTY COMMISSION,
John/Jane Doe Employees of the Raleigh
County Commission,
THE FAYETTE COUNTY COMMISSION,
John/Jane Doe Employees of the Fayette
County Commission,
THE GREENBRIER COUNTY COMMISSION,
John/Jane Doe Employees of the Greenbrier
County Commission,
THE MERCER COUNTY COMMISSION,
John/Jane Doe Employees of the Mercer
County Commission,
THE MONROE COUNTY COMMISSION,
John/Jane Doe Employees of the Monroe
County Commission,
THE SUMMERS COUNTY COMMISSION,
John/Jane Doe Employees of the Summers
County Commission,
THE WYOMING COUNTY COMMISSION,
John/Jane Doe Employees of the Wyoming
County Commission,
PRIMECARE MEDICAL OF WEST VIRGINIA, INC.,
John/Jane Doe PrimeCare Employees,
JOHN/JANE DOE CORRECTIONAL OFFICERS,
BETSY JIVIDEN, *individually as an employee of the
West Virginia Division of Corrections and Rehabilitation,*
WEXFORD HEALTH SOURCES, INC.

John/Jane Doe Wexford Employees,
BRAD DOUGLAS, *individually and in his official
capacity as the acting Commissioner of the West
Virginia Division of Corrections and Rehabilitation*,
JEFF S. SANDY, *individually and in his official
capacity as the Cabinet Secretary of the West
Virginia Division Department of Homeland Security*,
WILLIAM K. MARSHALL, III
*individually and in his official capacity as the Commissioner
of the West Virginia Division of Corrections and Rehabilitation*,
DAVID YOUNG, *individually and in his official capacity as
the superintendent of Southern Regional Jail*,

Defendants.

ORDER

Pending are Defendants’ joint Motion to Strike Plaintiffs’ Second Amended Class Action Complaint [Doc. 189] and Plaintiffs’ Motion to Refile Second Amended Complaint Out of Time [Doc. 190], both filed on April 20, 2023.¹

On April 5, 2023, the Court granted Plaintiffs’ Amended Motion for Leave to File Second Amended Complaint and ordered the Plaintiffs to “refile their Second Amended Complaint, along with any accompanying exhibits Plaintiffs deem pertinent thereto, within fourteen (14) days of entry” of the Order. [Doc. 172]. On April 17, 2023, Plaintiffs refiled their Second Amended Class Action Complaint. [Doc. 184]. The refiled Complaint differs from the Plaintiffs’ initially proposed Second Amended Complaint [Doc. 112]. Notably, the refiled Complaint adds three new Defendants -- Aramark Correctional Services, LLC, Robin Bowling, individually as an employee of Aramark Correctional Services, LLC; John/Jane Doe Aramark Employees -- and amends the prayer for relief [*compare* Doc. 112 ¶ (g) *with* Doc. 184 ¶ (h)].

¹ Inasmuch as Plaintiffs subsequently filed a Motion for Leave to File Third Amended Complaint [Doc. 191] on April 21, 2023, without an operative Complaint properly on the docket, the Motion is **DENIED WITHOUT PREJUDICE** to refile upon proper submission of the Second Amended Complaint [Doc. 191].


Defendants move to strike the refiled Second Amended Class Action Complaint. [Doc. 189]. Plaintiffs acknowledge their filing was in error and request an extension of time to refile the originally proposed Second Amended Complaint. [Doc. 190].

Inasmuch as Plaintiffs were not authorized to file a revised Second Amended Complaint, the Court **GRANTS** Defendants' Motion to Strike [Doc. 189]. Accordingly, the subject Second Amended Complaint is **ORDERED STRICKEN** [Doc. 184]. The Court further **GRANTS** Plaintiffs' Motion to Refile the Second Amended Complaint Out of Time [Doc. 190]. Plaintiffs are **ORDERED** to refile the Second Amended Complaint **within (7) days**.

The Clerk is **DIRECTED** to transmit a copy of this Order to all counsel of record and to any unrepresented party.

ENTER: July 14, 2023




Frank W. Volk
United States District Judge